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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1747

UNITED STATES BREWERS ASSOCIATION, INC., et. al
Petitioners,

v.

JULIO CESAR PEREZ, ETC., et. al
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

HECTOR A. COLON CRUZ
Solicitor General

FEDERICO CEDO ALZAMORA
Assistant Solicitor General
Department of Justice
P.O. Box 192
San Juan, Puerto Rico 00902
Phone: (809) 724-1913

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OPINIONS BELOW

The opinion of the Court of Appeals is not yet reported. It is set forth in Appendix E of the Petition for a Writ of Certiorari filed by the petitioner in this

case before this Honorable Court, as are the pertinent portions of the record before the Court of Appeals.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition for a Writ of Certiorari.

QUESTION PRESENTED

Whether the Court of Appeals erred in holding that the Butler Act, 48 U.S.C. Sec. 872, construed akin to 28 U.S.C. Sec. 1341, deprived the district court of jurisdiction to entertain an action to invalidate and restrain a discriminatory tax exemption alleged to be in violation of the Constitution of the United States and the Federal Relations Act, 48 U.S.C. 741(a)?

Whether the provisions of the aforecited anti-injunction statute are applicable where the action does not seek to invalidate or restrain the assessment or collection of a tax?

STATUTES INVOLVED

The Federal Statutes involved are: 48 U.S.C. Sec. 872; 28 U.S.C., Sec. 1341; 48 U.S.C., Sec. 741(a). The pertinent provisions of those statutes are printed in the petition.

STATEMENT

This action for injunctive and declaratory relief was filed at the United States District Court for the District of Puerto Rico by five corporations engaged in the business of manufacturing beer for distribution and sale in interstate and foreign commerce, and by

a trade association allegedly representing the manufacturers of ninety five percent of the beer sold in the United States, (none of which were taxpayers in Puerto Rico), challenging the validity of Act 37 of July 13, 1978, enacted by the Legislative Assembly of the Commonwealth of Puerto Rico, and praying that it would not be put into effect.

The defendants were the Secretary of the Treasury Department of the Commonwealth of Puerto Rico and the Director of the Bureau of Alcoholic Beverages of the same Department, both of whom are empowered to enforce the aforementioned Act 37.

This statute increased the internal revenue tax on beer and established a procedure to exempt therefrom beer ". . . produced or manufactured by persons whose total production during its most recent year has not exceeded thirty one million (31,000.000) wine gallons".

The plaintiffs here, the petitioners, challenged the validity of this statute, claiming that its intent and effect was the protection of small local breweries, by establishing a qualification for exempting their beers from the increased tax, which beers produced in huge quantities by them could not meet, and alleging, among other things, that its effect would cause a price difference at retail level that would give local beer a competitive advantage in the local market, to the detriment of beers imported from elsewhere.

After a hearing, the United States District Court, ruled that the Court lacked jurisdiction, but being "uncertain" as to the availability and adequacy of a local remedy (Opinion and Order P. 10 Appendix A of the Petition, page 22) resolved not to dismiss the complaint, holding its equitable hand because of the

aforementioned jurisdictional limitations, while the plaintiffs seeked as they were thereby directed to do forthwith, a decision from the Commonwealth Courts "as to the issues raised in the case and particularly, concerning the existence of an adequate right of action," (Opinion and Order, p. 10, Appendix A of the Petition, page 23), declining to enjoin either the additional tax or the exemption therefrom, refusing to extend the Temporary Restraining Order, and, pursuant 48 U.S.C. 872 (Butler Act 1 L.P.R.A., Organic Act Sec. 3) and 28 U.S.C. 1341 abstained from entering into the merits of the complaint.

Plaintiffs, here the Petitioners, filed a complaint in the Superior Court of Puerto Rico alleging the same grounds as in the complaint filed in the District Court, but reserving their federal rights, they also appealed before the United States Court of Appeals for the First Circuit. Both Courts decided against them: the first one upheld the constitutionality and validity of Act 37 of July 13, 1978, dismissing the complaint on its merits, the second one remanded the case to the district court to be dismissed for want of jurisdiction.

Now the plaintiffs, here the Petitioners, have appealed before the Supreme Court of Puerto Rico which has taken the case under advisement and where the parties are awaiting its decision in any moment, while they also petitioned this Honorable Court with a writ of certiorari, on the applicability of the Butler Act to deprive the federal court of jurisdiction under the circumstances of this case.

The fact that the lack of jurisdiction to entertain the complaint pursuant to 28 U.S.C. 1341 and 48 U.S.C. 872 in respect to the section of the Act 37 which levies and additional tax to the beers is not questioned by herein petitioners, must be always born in mind. Their allegations as to the anti-injunction statutes refer only to the part of the Act 37 which exempt beers which produce less than 31 million gallons from the additional tax. They allege that the anti-injunction statutes do not limit the jurisdiction of the Federal Court when a tax exemption is involved. Nevertheless, it is clear that there is only one Act 37 and that it has several tightly interrelated sections. To allow a preliminary injunction only in respect to one of those sections, would be tantamount to a legislative act, on the part of the Federal Courts, rendering this law meaningless besides destroying the local tax scheme, and smashing the Legislative intent of the Commonwealth, since this act is also in consonance with other Government policies, and this is precisely what the Federal Court are barred from, pursuant to 28 U.S.C. 1341 and 48 U.S.C. 872.

That is why, while the existence of an adequate right of action and the availability of a speedy remedy in state courts is not any longer in controversy here because it has already been proven beyond any doubt, still it is nevertheless to be borne in mind, since pursuant to 48 U.S.C. 872 which states that "No suit for the purpose of restraining the assessment or collection of any tax imposed by the Laws of Puerto Rico shall be maintained in the United States District Court for Puerto Rico" the respondents have asserted that the state courts are the proper forum to adjudicate federal rights such as those invoked here in the instant case. See *Generally*, *Baker* v. *Alchinsen, T & Santa Fe Ry Co.*, 106 F 2d 525 (10 Cir.); *Testa* v. *Kalt*, 330 U.S. 386 (1947).

ARGUMENT

Respondents hold that the anti-injunction statutes, 48 U.S.C. 872 (Butler Act) (Organic Act Section 3) and 28 U.S.C. 1341 deprived the District Court of Jurisdiction in a suit seeking to restrain the enforcement of a tax increase, *Sancho* v. *National City Bank of N.Y.*, 112 F. 2d 998 (1 Cir. 1940); *Paul Smith* v. *Buscaglia*, 140 F. 2d 900 (C.A. 1, 1944); *Smallwood* v. *Gallardo*, 275 U.S. 56; *Paul Smith* v. *Buscaglia*, 1 Cir. 140 F. 2d (1944); *Everlasting Development Corp., et al* v. *Sol Luis Descartes*, 95 F. Supp. 954 (1951), and the granting of a tax exemption which was indeed a pivotal element in the tax scheme which provided for that increase, in such a way that, undoubtedly, the Legislature of the Commonwealth would have never enacted Act 37 without the exemption it provided from the tax increase therein levied.

Petitioners have tried to establish, semantically, that the assessment or collection of a tax does not relate at all to an exemption from it, no matter how inbred it may be as an integral and indivisible part of such a tax, being thus, this exemption, no bar to the jurisdiction of the District Court.

We deem that such an exemption, which is precisely what defines the Extension, See *Syracuse Trust Co.* v. *Board of Suprs. of Oneida County*, 13 NYS 2nd 390, the limits, and even one of the main purposes or aims of that particular tax increase, can not be viewed as if its fiscal impact and economic effect had not been duly appraised by the Legislators of the Commonwealth as a principal aspect of their tax scheme in keeping with the domestic tax policy of the state. See *Great Lakes Co.* v. *Huffman*, 319 U.S. 293 (1943); *Mathew* v. *Rodgers*, 284 U.S. 521.

Act 37 definitely to be seen as a whole. The presumption to be upheld is that the legislature intends an act to be effective as an entirety. The rule is against the mutilation of a statute and the preservation of a whole when it partakes of an indivisible character. *Carter* v. *Carter Coal Co.*, 298 U.S. 238 (1935). See also *Champling Refining Co.* v. *Corp. Com.* (1931) (286 U.S. 210); *Pollacs* v. *Farmer's Loan And Trust Co.*, 158 U.S. 601 (1884); *Williams* v. *Standard Oil Co.*, 278 U.S.; *Sprarque* v. *Thompsen*, 188 U.S. 90 (1885).

Some exemptions may bear to be defined as inmunities from a Tax Burden, while others might even be considered to be the very soul of a Tax Scheme, a sine-qua-non element, without which the rest would not make much sense any longer, and in this respect, the assessment, appraisal or evaluation of such an exemption has to be definitely considered as bearing in the assessment, levying and collection of the tax to which it applies.

So, the District Court, pursuant to the Butler Act, lacked jurisdiction to entertain the instant action, inasmuch as it concerned a restraint on the assessment of a tax and the exemption provided from it.

Now, pursuant to the other anti-injunction statute cited by the petitioners, 28 USC 1341, The District Court also lacked jurisdiction to entertain the instant case, (See *Mathew* v. *Rodgers*, 284 US 521 (1932); *Boise Water Co.* v. *Boise City*, 213 U.S. 276; *Shelton* v. *Platt*, 139 U.S. 591; *Dows* v. *Chicago*, 11 Wall. 108, 110, 112; *Tulley* v. *Griffin*, 429 US 68 (1976), inasmuch as the only condition it imposes (not specified in the akin but more barring Butler Act) that is, the availability of a plain, speedy and efficient remedy in the Courts of a state, (See *Cafeteros de Puerto Rico*

v. *Treasurer*, 74 PRR 704, 715 (1953); *Cooperativa Cosecheros de Cafe* v. *Treasurer*, 69 PRR 210 (1948); *Fernandez* v. *Buscaglia*, 60 PRR 582 (1942); *Benitez* v. *Sancho Bonet*, 54 DPR 751; *Los Diablos de la Plaza* v. *Sancho Bonet*, 54 DPR 751 (1939); *E. Sole & Cia.* v. *Sancho Bonet*, 53 DPR 762 (1938); *The Texas Co.* v. *Domenech*, 50 DPR 432 (1932); *Durlach Brothers, Inc.* v. *Domenech*, 47 DPR 654 (1934)), was met here in this case, as proven by the fact that the Superior Court of the Commonwealth already has considered the case on its merits, settling the constitutional questions presented before it, in its Opinion and Order of December 12, 1978. (Appendix D of the Petition) of which the petitioners have appealed before the Supreme Court of the Commonwealth of Puerto Rico.

The respondents consider also that the District Court lacked jurisdiction to entertain this case, because the Twenty First Amendments of the Constitution of the United States allows the states, territories or possessions to absolutely regulate, taxwise or otherwise, the importation of intoxicating liquors, without any restrictions.

The United States Congress granted the Legislature of Puerto Rico power to levy internal revenue and taxes, and Act 37 did not violate its limiting proviso; that no discrimination be made.

The assailed exemption from the tax increase enacted, was based solely on a criteria of volume of production and it was never shown that such criteria with antitrust leanings violated Section 3 of the Federal Relations Act, or even that it partaked or a discriminatory nature at all. It was just designed to foster competition and avoid placing an unbearable

burden on small breweries, since the required yearly volume of production is considerably less than the minimum output that is considered necessary for a successful operation of a Brewery, thus, it can not be described as arbitrary, unreasonable or capricious, since it tends to foster the interests of the state by helping to prop-up bound-to-fail concerns, whose survival as job sources is important to the Commonwealth (as a socio economic stabilizing factor), and whose very presence as viable participants would tend to promote desirable competition in that field of industry and commerce.

The fact that almost half of all members of the United States Brewers Association qualify for the tax exemption provided for in Act 37, as well as many other foreign ones, show how this exemption was not tailored, as claimed, to fit only the local ones.

Thus the alleged discrimination has been belied by the fact that as to this date, the foregoing and stateside breweries enjoying the benefits of such tax exemption outnumber the local ones, a situation that only underlines what was already obvious to the District Court.

This in an action for declaratory and injunctive relief may we respectfully ask: Relief from What?

The local beer industry originated in 1934 and in forty years it had already lost 60% of its breweries. In fact, ten years had passed since anyone tried last, and unsuccessfully of course, to start locally a new brewery. That industry came to employ about 20% less people than it did then. The two small remaining local breweries shared only 26.5% of the local market

at the time Act 37 was enacted and the trend was downward (about 5% each year for the last 15 years).

After the enactment of Act 37, imported beers have continued to dominate the Puerto Rican Market, which has proven itself to be so as predictable that, for example, in spite of the new price structure, during the last November, local beer sales decreased by almost 6% when compared with last year's figures.

So we could conclude that about the only damage that Act 37 could bring upon the appellants, would be to reduce somewhat their unwholesome chance to capture 100% of the local market. An improbable damage that is not only uncertain, but that in any case would be beneficial to the general public of consumers unasmuch as competition is deemed to be healthy and convenient in our free enterprise system.

Thus, considering all the above, we can only but summarize that the Butler Act effectively deprived the federal court of jurisdiction under the circumstances of this case.

It is therefore manifest that there is no conflict of decisions nor an important question of Federal law requiring a decision by this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

At San Juan, Puerto Rico, July 11, 1979

HECTOR A. COLON CRUZ
Solicitor General

FEDERICO CEDO ALZAMORA
Assistant Solicitor General
Attorneys for Respondent
Department of Justice
P.O. Box 192
San Juan, Puerto Rico 00902
Phone: (809) 724-1913